NO. 79-1144

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

TEXAS INDUSTRIES, INC.,

Petitioner

VERSUS

RADCLIFF MATERIALS, INC., JIMCO, INC. and OKC DREDGING, INC.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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Certiorari GRANTED November 3, 1980

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NO. 79-1144

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

Texas Industries, Inc.,

Petitioner

V.

Radcliff Materials, Inc., Jimco, Inc.
and OKC Dredging, Inc.,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

WILSON P. ABRAHAM
CONSTRUCTION CORPORATION,

Plaintiff

VS.

TEXAS INDUSTRIES, INC., and FRANK T. DOOLEY.

CIVIL ACTION
NO. 75-2820
SECTION "F"

COMPLAINT

[filed U. S. District Court Eastern District of La. Sep. 8, '75, 2:09 PM]

Plaintiff, WILSON P. ABRAHAM CONSTRUCTION CORPORATION, a Louisiana corporation, by its attorneys, brings this civil action against the Defendants above named for treble the amount of damages suffered by it due to Defendants' violations of the antitrust laws of the United States and of the State of Louisiana, and, in support of its causes of action, alleges, upon information and belief, as follows:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed, and the jurisdiction of this Court correspondingly invoked, under the authority of Section 4 of the Clayton Act (15 U. S. C. §15), to recover damages from the Defendants for their willful violations of Section 1 of the Sherman Act (15 U. S. C. §1).

1.2 Jurisdiction is further conferred, under the principles of pendent jurisdiction, with reference to Defendants' violations of the antitrust laws of the State of Louisiana. The claims herein asserted based upon federal questions (violations of federal antitrust laws) are asserted against the same Defendants with respect to which non-federal claims (violations of the antitrust laws of the State of Louisiana) are herein asserted.

1.3 The corporate Defendant maintains offices and transacts business within the boundaries of the State of Louisiana and within the boundaries of the Eastern District of Louisiana. The individual Defendant has transacted business with reference to the sale of ready-mix concrete within the State of Louisiana during the period of the violations herein alleged, is a resident of the State of Louisiana, and resides within the Eastern District.

1.4 Substantially all of the unlawful acts done pursuant to and in furtherance of Defendants' and their co-conspirators' combination and conspiracy to violate the antitrust laws of the United States and the State of Louisiana were planned, executed and enforced within the Eastern District. Further, the activities of all the co-conspirators involving interstate trade and commerce (as hereinafter more fully described) were and are being carried on, in substantial part, within the territory comprehended by this District.

II. DEFINITIONS AND DESIGNATIONS

2.1 For purposes of simplicity and clarity, certain designations and shorthand renditions will be utilized throughout this Complaint. As used herein, the following terms are described or defined as follows:

(a) "Ready-mix concrete": A mixture of cement and other materials, such as sand, stone and water, and,

at times, additives, which mixture is widely used in the construction and improvement of various types of structures and appurtenances;

(b) "Ready-Mix Concrete Supplier": A person, firm, corporation or other entity which is engaged in the business of producing and selling ready-mix concrete;

(c) "Target Area": That geographical area comprehended by or materially affected by the illegal activities and conspiracies of Defendants, or any of them, to violate the antitrust laws of the United States and the State of Louisiana, as hereinafter described, encompassing generally the New Orleans area;

(d) "New Orleans Area": The parishes of Orleans, Jefferson and St. Bernard in the State of Louisiana.

III. DESCRIPTION OF THE PARTIES

THE PLAINTIFF

3.1 The Plaintiff, Wilson P. Abraham Construction Corporation, is a corporation duly organized and existing under the laws of the State of Louisiana, maintaining its principal offices in the city of New Orleans. Plaintiff is engaged in the building of both residential and commercial structures. During the period of Defendants' violations of the antitrust laws, as hereinafter described, Plaintiff built various structures, including substantial residential developments, private roads and the like, within the State of Louisiana. In the course of such building activities, Plaintiff has made substantial purchases of ready-mix concrete from Defendant, Texas Industries, Inc., within the New Orleans area.

THE DEFENDANTS

3.2 The Defendant, Texas Industries, Inc. (hereinafter referred to as "Texas Industries"), which engages in the ready-mix concrete business in the New Orleans area through its division, Louisiana Industries, was organized and exists under the laws of the State of Delaware. Louisiana Industries has its principal place of business in New Orleans, Louisiana. During the period covered by this Complaint, Louisiana Industries, a ready-mix concrete supplier, produced and sold ready-mix concrete in the New Orleans area.

3.3 The Defendant, Frank T. Dooley (hereinafter referred to as "Dooley"), is a resident of New Orleans, Louisiana, and during the period covered by this Complaint was employed by Texas Industries as Vice-President and Regional Manager, New Orleans.

IV. NATURE OF TRADE AND COMMERCE

4.1 During the period covered by this Complaint, Defendant, Texas Industries, produced ready-mix concrete in the New Orleans Area, which it sold to Plaintiff based upon oral and written price quotations. Plaintiff used the ready-mix concrete in the construction, repair, alteration and improvement of commercial and residential structures, developments, subdivisions and the like.

4.2 Cement, a basic ingredient in the production of ready-mix concrete, represents approximately fifty per cent of the total cost of materials used to produce such concrete. Texas Industries orders and purchases cement on the basis of existing orders and anticipated demand for ready-mix concrete. A substantial part of the cement purchased by Texas Industries for use in the production of their ready-mix concrete is produced in states other than the State of Louisiana and is delivered by suppliers thereof to Texas Industries in response to spe-

cific orders placed by Texas Industries.

4.3 Texas Industries, therefore, acts as a conduit through which cement flows in a continuous, uninterrupted stream in interstate commerce from the states in which it is produced to ready-mix concrete production facilities maintained in the New Orleans area, where it is incorporated into ready-mix concrete and from there delivered to job sites.

4.4 Aggregate, sand and gravel, other major ingredients used in the production of ready-mix concrete, are ordered and purchased by Texas Industries on the basis of existing orders and anticipated demand for ready-mix concrete. Some of these ingregients (sic) purchased by Texas Industries for use in the production of their ready-mix concrete are produced or found in states other than the State of Louisiana and are delivered by suppliers thereof to Texas Industries in response to specific orders placed by these defendants.

4.5 The annual sales of ready-mix concrete in the New Orleans area are substantial. Plaintiff believes that sales of ready-mix concrete made by the co-conspirators, of which Texas Industries is one, pursuant to their conspiracies to fix prices of ready-mix concrete during the time period covered by this Complaint was in excess of $40,000,000.00.

4.6 There is, therefore, a continual and substantial movement of said ready-mix concrete in interstate commerce. Any restraint upon competition in production and sale of ready-mix concrete necessarily and directly affects interstate commerce.

V. VIOLATIONS OF FEDERAL ANTITRUST LAWS

5.1 Beginning in about mid 1968 and continuing thereafter until at least the time of filing of this Complaint (the exact dates being unknown to the Plaintiff), the Defendants Texas

Industries and Dooley entered into and engages in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended (15 U. S. C. §1).

5.2 The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the Defendants, Texas Industries and Dooley, and their co-conspirators to raise and stabilize the price of ready-mix concrete in the New Orleans area.

5.3 The illegal combination and conspiracy had, among others, the following effects:

(a) Price competition in the sale of ready-mix concrete in the New Orleans area was unreasonably restrained;

(b) Customers of Texas Industries and its co-conspirators in the New Orleans area were deprived of the opportunity to purchase ready-mix concrete in an open and competitive market; and

(c) Prices of ready-mix concrete were increased and the market stabilized in the New Orleans area.

FRAUDULENT CONCEALMENT

5.4 Plaintiff had no knowledge of the illegal combinations and conspiracies, or any of the violations of the antitrust laws of the United States, or of any facts which might have led to the discovery of same, until shortly after the indictment of the Defendants, Texas Industries, Dooley and their co-conspirators. Plaintiff could not have uncovered the existence of the illegal activities committed by Defendants Texas Industries and Dooley, and their co-conspirators, at an earlier date by the exercise of due diligence, inasmuch as their unlawful con-

spiracies and acts have been fraudulently and actively concealed.

VI. VIOLATIONS OF LOUISIANA ANTITRUST LAWS

6.1 The wrongful acts, combinations and conspiracies of Defendants alleged herein are each and all in violation of the Constitution and Statutes of the State of Louisiana, which prohibit, ***inter alia***, combinations, contracts and conspiracies in restraint of trade within the State of Louisiana (LSA -Const. Art. 19, Sect. 14, and LSA-R.S. 51:121 et seq.). All allegations contained herein relevant to these violations are adopted in aid hereof, and specifically the allegations of Section V of this Complaint. Such wrongful activities constitute an unreasonable restraint upon trade and commerce within the State of Louisiana, and the doctrine of pendent jurisdiction is invoked by plaintiff.

VII. INJURY TO PLAINTIFF

7.1 During the period of unlawful activities, as alleged, Plaintiff has been compelled to pay substantially higher prices in its building and construction activities utilizing said ready-mix concrete than would have been the case but for said illegal acts and courses of conduct committed and pursued by Defendants in flagrant disregard for the antitrust laws of the United States and the State of Louisiana.

7.2 During the period of said illegal activities, Plaintiff purchased ready-mix concrete from Texas Industries for which it paid $470,971.06. As the direct and proximate result of Defendants' illegal acts, Plaintiff has suffered substantial financial damages by virtue of illegal overcharges on said ready-mix concrete in a market devoid of free competition, aggregating to a sum in excess of $200,000.00 to Plaintiff's best estimate and belief, for all of which recovery is prayed.

7.3 Since the true amount of damages sustained as a result of said illegal over-charges is peculiarly within the province of the knowledge of Defendants Texas Industries and Dooley and their co-conspirators, Plaintiff reserves the right to amend this Complaint as to damages subsequent to completion of discovery processes herein.

VIII. BASES FOR EQUITABLE RELIEF

PERMANENT INJUNCTION

8.1 The allegations of Sections IV and V, ***infra***, are specicically incorporated hereunder for purposes of reference, as well as any other allegations contained herein which would support the intervention of the equitable powers of this Court.

8.2 While Plaintiff has a demonstrable legal remedy by virtue of its "treble-damage" claim, such legal remedy is incomplete and inadequate to provide whole relief and to protect Plaintiff from being again deprived of its right, and that of the public at large, to a free and competitive market in the sale of ready-mix concrete. First, the violations complained of are continuing in nature, and the prospect of successive damage actions to compense Plaintiff and to deter such wrongful conduct is patently an inadequate remedy in that, ***inter alia***, it does not provide a "speedy" and effective disposition to the injuries, and due to the protraction inherent in the nature of antitrust litigation, never makes the Plaintiff truly whole for the injuries sustained in the interim.

8.3 Accordingly, Plaintiff will suffer irreparable injury, and the interests of the public at large in a free and competitive market will be irreparably harmed, unless, upon final trial hereof, a permanent injunction is issued restraining Defendants from any continuation of the violations and offenses charged herein.

IX. ATTORNEYS' FEES

9.1 Because of the wrongful conduct of Defendants, and each of them, in their violations of the antitrust laws of the United States and the State of Louisiana, it has been necessary for this Plaintiff to retain the services of legal counsel to represent its interests and to prosecute its rights, and those of the class represented by Plaintiff herein. Upon final determination of this cause, Plaintiff prays that reasonable attorneys' fees and recovery of expenses be awarded counsel commensurate with the responsibilities assumed and benefits secured to Plaintiff.

X. INFORMATION AND BELIEF

10.1 Since the very nature of price-fixing practices are conspiratorial and covert, experience reveals that the facts of such wrongful acts are notoriously concealed. Accordingly, Plaintiff makes its allegations herein upon its best information and belief, as such pleading is authorized by the Federal Rules of Civil Procedure.

10.2 Plaintiff respectfully reserves its right to amend or correct its pleadings and to assert its allegations with more particularity subsequent to production of documents, the taking of depositions and the completion of other discovery processes authorized.

XI. DEMAND FOR JURY

11.1 Plaintiff respectfully enters its demand for trial by a jury of all claims and allegations asserted herein, pursuant to its right therefor under the Constitution of the United States and the Federal Rules of Civil Proceedure.

XII. RELIEF REQUESTED

12.1 WHEREFORE, upon these premises, Plaintiff, Wilson P. Abraham Construction Corporation, requests the following relief upon final trial hereof:

(I) That the alleged combinations and conspiracies between Defendants and their co-conspirators be adjudged and decreed to be in unreasonable restraint of interstate trade and commerce and in violation of Section 1 of the Sherman Act, and Article 19, Section 14, of the Constitution of the State of Louisiana as well as its statutes (LSA-R. S 121 et seq.);

(II) That actual damages sustained by Plaintiff be ascertained and adjudicated in the sum of Two Hundred Thousand Dollars ($200,000.00), or such other sum as is sustained by the evidence, whether greater or lesser;

(III) That judgment be entered against Defendants, jointly and severally, for treble the amount of actual damages suffered by Plaintiff in the sum of Six Hundred Thousand Dollars ($600,000.00), or such other sum as is sustained by the evidence, whether greater or lesser, pursuant to the authority of Section 4 of the Clayton Act (15 U. S. C. §15);

(IV) That judgment be entered against Defendants, jointly and severally, awarding Plaintiff all costs of Court and expenses of litigation herein incurred, together with reasonable attorneys' fees for the prosecution of this action, as required and authorized by Section 4 of the Clayton Act (15 U. S. C. §15);

(V) That judgment be entered against Defendants, jointly and severally, awarding Plaintiff recovery of moratory interest upon actual damages sustained from the dates of ascertainment thereof, together with interest upon the total judgment at the rate of six per cent (6%) per annum, until the same be paid;

(VI) That a final decree be entered permanently restraining and enjoining Defendants, their officers, employees, agents, privies and all persons or firms acting in concert with them, whether directly or indirectly, from continuing or pursuing those acts alleged herein as violations of the antitrust laws of the United States and the State of Louisiana; and

(VII) The granting of such other and further relief, whether in equity or at law, which is appropriate upon the premises.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF,
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Corporation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORP.

VERSUS

TEXAS INDUSTRIES, INC., and FRAND T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

ANSWER

[filed U. S. District Court Eastern District of La. Oct. 22, '75, 12:15 PM]

NOW INTO COURT through undersigned counsel, comes defendant, Texas Industries, Inc., for the purpose of answering the complaint filed herein, as follows:

FIRST DEFENSE

The complaint fails to state a cause of action upon which relief can be granted against Texas Industries, Inc.

SECOND DEFENSE

This Court lacks jurisdiction over the subject matter set forth in the complaint for the reason that the alleged action of Texas Industries, Inc. was not within the flow of interstate commerce and had no effect on interstate commerce.

THIRD DEFENSE

Alternatively, the complaint purportedly states a cause of

action that is barred by the four year statute of limitation provided in Title 15 U. S. C. §15(b) in that the cause of action accrued more than four years prior to the filing of this suit.

FOURTH DEFENSE

Further alternatively, plaintiff lacks standing to recovery for alleged antitrust violations from Texas Industries, Inc.

FIFTH DEFENSE

Texas Industries, Inc. answers the complaint paragraph by paragraph as follows:

I.

1.1 It is denied this Court has subject matter jurisdiction pursuant to the authorities set forth in this paragraph.

1.2 Pendent jurisdiction of the matters set forth herein is denied.

1.3 Denied except that it is admitted that Texas Industries, Inc. maintains offices and transacts business within the State of Louisiana and within the boundaries of the Eastern District of Louisiana.

1.4 It is denied that Texas Industries, Inc. committed any unlawful acts whatsoever and it is further denied that the activities of Texas Industries, Inc. involved interstate commerce.

II.

2.1 The allegations of plaintiff purportedly defining certain terms require no answer of this defendant.

III.

3.1 Denied for lack of sufficient information to justify a

belief therein.

3.2 Admitted.

3.3 Denied.

IV.

4.1 Denied for lack of sufficient information to justify a belief therein, it being further denied that Texas Industries, Inc. sold ready-mix concrete directly to plaintiff.

4.2 Denied.

4.3 Denied.

4.4 Denied.

4.5 It is denied that Texas Industries, Inc. is a co-conspirator.

Remaining allegations are denied for lack of sufficient information to justify a belief therein.

4.6 Denied.

V.

5.1 Denied.

5.2 Denied.

5.3 Denied.

5.4 Denied.

VI.

6.1 It is denied that defendant, Texas Industries, Inc., is guilty of any wrongful acts, combinations or conspiracys as alleged herein. The remaining allegations of this paragraph are denied.

VII.

7.1 Denied.

7.2 Denied.

7.3 Denied.

VIII.

8.1 Denied.

8.2 Denied.

8.3 Denied.

IX.

9.1 It is denied that defendant, Texas Industries, Inc., has been guilty of any wrongful conduct. Remaining allegations of this paragraph are denied.

X.

10.1 Denied.

10.2 Denied.

XI.

11.1 The allegations of this paragraph require no answer of this defendant.

XII.

12.1 It is denied that plaintiff is entitled to the relief requested herein.

WHEREFORE, defendant, Texas Industries, Inc., prays that the above and foregoing answer be deemed good and sufficient and that after due proceedings are had there be judgment rendered in its favor dismissing plaintiff's demands at its costs. Said defendant further prays for all general and equitable relief.

MONROE & LEMANN

Benj. R. Slater, Jr.
William J. Hamlin

/s/William J. Hamlin
1424 Whitney Building
New Orleans, Louisiana 70130
Telephone: 586-1900

[Certificate of Service omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC., and FRANK T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

INTERROGATORIES TO PLAINTIFF, WILSON P. ABRAHAM CONSTRUCTION CORPORATION (FIRST SET)

[filed U. S. District Court Eastern District of La. Oct. 30, '75, 12:41 PM]

Defendant, Texas Industries, Inc., propounds the following interrogatories to plaintiff, Wilson P. Abraham Construction Corporation, to be answered under oath pursuant to Rule 33 of the Federal Rules of Civil Procedure:

INTERROGATORY NO. 1: In Paragraph 5.1 of your complaint, you allege that "Beginning in about mid-1968 and continuing thereafter until at least the time of filing this Complaint, . . .the Defendants Texas Industries and Dooley entered into and engaged in an unlawful combination and conspiracy and unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act." Please identify, by date, location, parties involved and description of occurrence, all overt acts of Texas Industries, Inc.

or Dooley that occurred after September 7, 1971 and that you contend constituted part of the said continuing unlawful combination and conspiracy.

INTERROGATORY NO. 2: Please identify and describe all facts on which you will rely to prove that Texas Industries and Dooley entered into and engaged in an unlawful combination and conspiracy, as alleged in Paragraph 5.1 of your complaint, that took place or continued after September 7, 1971.

INTERROGATORY NO. 3: Please describe fully all facts on which you will rely to prove that this Court has Sherman Act jurisdiction over the alleged unlawful combination and conspiracy described in Paragraph 5.1 of your complaint.

INTERROGATORY NO. 4: Please identify the co-conspirators you make reference to in Paragraph 4.5 and 5.2 of your complaint.

MONROE & LEMANN

Benj. R. Slater, Jr.
William J. Hamlin

/s/ William J. Hamlin
1424 Whitney Building
New Orleans, Louisiana 70130
Telephone: 586-1900

[Certificate of Service omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

WILSON P. ABRAHAM
CONSTRUCTION CORPORATION,

Plaintiff

VS.

TEXAS INDUSTRIES, INC., and
FRANK T. DOOLEY,

Defendants

CIVIL ACTION
NO. 75-2820
SECTION "F"

PLAINTIFF'S ANSWERS TO INTERROGATORIES
(FIRST SET)

[filed U. S. District Court Eastern District of La. Jan. 27, '76, 10:04 AM]

TO: Benjamin R. Slater, Jr., Esquire
William J. Hamlin, Esquire
MONROE & LEMANN
1424 Whitney Building
New Orleans, Louisiana 70130

COMES NOW Wilson P. Abraham Construction Corporation, Plaintiff herein, and files this, its Answers to Interrogatories (First Set), and in response thereto would state as follows:

Interrogatory No. 1

By virtue of the fact that any unlawful conspiracy is, by its

very nature, secret and covert, it is impossible for Plaintiff, at this stage of the proceedings, without resort to descovery, to set forth with specificity a detailed description of Defendants' acts occurring during the period in question.

Interrogatory No.. 2

The evidence currently known to Plaintiff at this time, without resort to discovery, is primarily circumstantial. The facts are that Defendants and other unnamed co-conspirators are still selling ready-mix concrete at a uniform price, and all attempts to obtain a lower or reduced price have been unsuccessful. Additionally, on bid jobs the concrete supplier closest to the job site has uniformly submitted, by a very small amount, the lowest bid for the job. Based on these facts, Plaintiff believes that the conspiracy to fix prices and allocate territory has continued to the present time.

Interrogatory No. 3

The primary facts conferring jurisdiction are set forth in Paragraphs 4.2, 4.3, 4.4 and 4.6 of the Complaint filed in this cause.

Interrogatory No. 4

(1) Jahncke Service, Incorporated.

(2) Jimco, Inc.

(3) Radcliff Materials, Inc.

(4) Herbert G. Jahncke, Sr.

(5) Edward N. Lennox

(6) James Schwartz

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

/s/ Wilson P. Abraham
Wilson P. Abraham, President

[Jurat and Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

WILSON P. ABRAHAM CONSTRUCTION CORPORATION,

Plaintiff

VS.

TEXAS INDUSTRIES, INC., and FRANK T. DOOLEY,

Defendants

CIVIL ACTION
NO. 75-2820
SECTION "F"

PLAINTIFF'S AMENDED ANSWERS TO INTERROGATORIES (SECOND SET)

[filed U. S. District Court Eastern District of La. Sep. 16, '76, 10:06 AM]

TO: Benjamin R. Slater, Jr., Esquire
William J. Hamlin, Esquire
MONROE & LEMANN
1424 Whitney Building
New Orleans, Louisiana 70130

COME NOW Wilson P. Abraham Construction Corporation, Plaintiff herein, and files this, its Amended Answers to Interrogatories (Second Set), and in response thereto would state as follows:

INTERROGATORY NUMBER ONE:

State separately with respect to each ready-mix concrete transaction for which damages are sought in this action by plaintiff, the following:

(a) Name of concrete supplier;

(b) Name and street address of project where concrete was installed;

(c) Type of concrete:

1. Number of sacks of cement per cubic yard;

2. Minimum pounds per square inch breaking strength;

3. Other special features;

(d) Number of cubic yards of each type of concrete;

1. Specified for use in the project;

2. Actually used in the project;

(e) Commencement and ending dates on which concrete was delivered to the installation site;

(f) Precise nature of the project or structure into which ready-mix concrete purchased by you was incorporated or installed.

ANSWER TO INTERROGATORY NUMBER ONE:

(a) (i) Louisiana Industries, a division of Defendant Texas Industries, Inc., 5825 River Road, New Orleans, Louisiana.

(ii) The Ready Mix Companies, a division of Davis Industries, 9600 West Bank Expressway, Jefferson Parrish, (sic) Louisiana.

(iii) Drake Concrete Co. of Belle Chase, Inc., 103 Burmaster Street, Belle Chase, Louisiana

(iv) It is Plaintiff's belief that these are the only concrete suppliers from whom concrete was purchased, but if subsequent discovery should reveal additional sellers of concrete to plaintiff, plaintiff reserves the right to amend this answer.

(b) - (e) The name and street address of the projects where concrete was installed, the type and amount of concrete and the delivery dates may be derived from the documents previously produced for inspection and copying. On each invoice for the purchase of concrete, the location where such concrete was shipped, the person sold to, the invoice date, quantity, description, price and terms are designated. Additionally, attached to each invoice are route tickets for each delivery of concrete which comprises such invoice. Such route tickets are apparently prepared by the driver of the delivery truck and designated on such job ticket the date, the person sold to, the address delivered to, the quantity and type of concrete in the respective load, the truck number and in some instances, the time of day of the delivery for each truck load of concrete delivered. A representative copy of the invoices received from defendant is attached hereto as Exhibit "A". Attached hereto as Exhibit "B" is a representative copy of the route tickets.

The burden of extracting the information requested by this interrogatory is substantially the same for plaintiff as for defendants. Accordingly, plaintiff will make available such documents for the period requested at the offices of Steeg & O'Connor, Oil & Gas Bldg., New Orleans, Louisiana, at a date

or dates mutually convient to the parties during normal business hours pursuant to Rule 33(c), F. R. C. P.

(f) The ready-mix concrete purchases by Plaintiff were used primarily for residential conctruction purposes. The concrete was utilized to construct structural slabs, roadways, curbings, sidwalks, driveways, patios, porches and the like.

INTERROGATORY NUMBER TWO:

As to each such transaction state whether the concrete was:

(a) Purchased directly by plaintiff from the concrete supplier; or

(b) Purchased from the concrete supplier by a contractor other than plaintiff.

ANSWER TO INTERROGATORY NUMBER TWO:

All purchases of ready-mix concrete made by Plaintiff herein during the period relevant to this action were made directly from the concrete supplier.

INTERROGATORY NUMBER THREE:

If a contractor other than plaintiff purchased the concrete from the concrete supplier, state as to the contract for the work or construction in which concrete was one of the materials specified:

(a) The name and address of the contractor;

(b) Whether the contract for the project was awarded by plaintiff on the basis of sealed bids, evaluation of bids, price quotation, negotiations, or a combination thereof (designating the combination), and if none of the

foregoing, state what said basis was;

(c) Whether an estimate of the price or cost of the work contemplated by the contract was made, and if so:

1. The date such estimate was prepared;

2. The name, address and position or title of each individual who participated in the preparation of the estimate;

3. The estimated total price or cost of such work;

4. The estimated total price or cost of the concrete to be furnished pursuant to the contract, and the estimated unit price of each separately identified type of concrete;

(d) The date of the bid invitation for the project, and the last date upon which bids were to be submitted;

(e) The total dollar amount:

1. Of the lowest bid;

2. Of the successful bid;

3. Paid to the successful bidder;

(f) The name, address and position of each person acting on behalf of plaintiff who participated in evaluating the bids or quotations, in negotiating with respect to the contract, or in recommending or deciding as to whom the contract should be awarded;

(g) The date on which plaintiff awarded the contract for the project.

ANSWER TO INTERROGATORY NUMBER THREE:

Not applicable.

INTERROGATORY NUMBER FOUR:

If the concrete was purchased directly by plaintiff from the concrete supplier, state:

(a) The total dollar amount paid to the concrete supplier for such concrete;

(b) The name and address of the person who made such payment to the concrete supplier;

(c) The unit price for each type of such concrete:

1. As stated in the contract with the concrete supplier;

2. As actually paid to the concrete supplier;

(d) The name and address and position of each person acting on behalf of plaintiff who negotiated with the concrete supplier with respect to such contract;

(e) The date plaintiff and the concrete supplier agreed upon the price for the concrete;

(f) The date of the last payment by plaintiff to the concrete supplier for such concrete;

(g) Whether plaintiff received any reimbursement from anyone for any part of the payments to the concrete supplier, and if so, describe the amount, date and source of such reimbursement.

ANSWER TO INTERROGATORY NUMBER FOUR:

(a) Plaintiff estimates that it purchased approximately $1,000,000.00 worth of ready-mix concrete during the period in which the price of such concrete was not established by open competitive methods, but, instead, inflated pursuant to conspiratorial agreements among various concrete suppliers.

(b) Wilson P. Abraham Construction Corporation.

(c) To the best of plaintiff's knowledge and belief, the unit price for each type of concrete stated on the invoice received from the concrete supplier was the same as actually paid to the concrete supplier. Reference should be had to Exhibits "A", "C" and "E" attached hereto for representative copies of the invoices which supply the information requested by this portion of the interrogatory.

The burden of extracting the information requested by this interrogatory is substantially the same for plaintiff as for defendants. Accordingly, plaintiff will make available such documents for the period requested at the offices of Steeg & O'Connor, Oil & Gas Building, New Orleans, Louisiana, at a date or dates mutually convenient to the parties during normal business hours pursuant to Rule 33(c), F. R. C. P.

(d) (i) Wilson P. Abraham, President of Wilson P. Abraham Construction Corporation, 225 Barrone Street, Suite 103, New Orleans, Louisiana 70112; (ii) Edmund Thomas Blancher, Comptroller of Wilson P. Abraham Construction Corporation, 225 Barrone Street, Suite 103, New Orleans, Louisiana 70113; (iii) Wilmer Serpas, Jr., former Comptroller of Wilson O. Abraham Construction Corporation, current address unknown.

(e) Plaintiff has no independent recollection of the exact dates that the price he paid for the concrete was agreed on, but, the date on which the price was agreed on would be on or about

the date of actual delivery. The dates of actual delivery may be obtained from the route tickets which plaintiff has attached to the invoices and which are available for inspection and copying.

(f) Among the records previously produced by plaintiff herein are check stubs of plaintiff indicating the date upon which plaintiff paid for such concrete. Plaintiff did not disburse a check to the concrete supplier for each delivery of concrete, but instead would remit a payment to the concrete supplier for invoices received from that supplier. The burden of ascertaining the information requested by section (f) of this interrogatory will be the same on plaintiff as it is on defendant. Plaintiff has previously produced such records for inspection and copying by defendant and plaintiff will again make available such documents for the periord requested at the offies (sic) of Steeg & O'Connor, Oil & Gas Building, New Orleans, Louisiana, at a date mutually convenient to the parties during normal business hours pursuant to Rule 33(c), F. R. C. P.

(g) Plaintiff has not received any reimbursement for anyone for any part of the payment to the concrete supplier.

INTERROGATORY NUMBER FIVE:

Identify all documents relating to each such ready-mix concrete transaction.

ANSWER TO INTERROGATORY NUMBER FIVE:

The documents relating to each ready-mix concrete transaction by plaintiff has previously been produced for inspection and copying by defendants. Such documents will again be made available at a mutually convenient time for inspection and copying by defense counsel. The documents consist of invoices from concrete suppliers, examples of which are attached hereto as Exhibits "A", "C" and "E". Additionally, such documents consist of route tickets which have been attached to the

invoice copies, representative copies of which are attached hereto as Exhibits "B", "D" and "F", and such documents consist of check stubs indicating payment for concrete supplied, a representative copy of which is attached hereto as Exhibit "G".

INTERROGATORY NUMBER SIX:

Please state precisely what damages you claim to have suffered as a result of any actions of the alleged co-conspirators involving ready-mix concrete transaction you have participated in, including in your answer your method of calculating such damages as to each such ready-mix concrete transaction.

ANSWER TO INTERROGATORY NUMBER SIX:

The primary damage sustained by plaintiff herein is that, by virtue of the conspiratorial agreements among suppliers of ready-mix concrete the price paid by plaintiff for such concrete was substantially and arbitrarily inflated. Plaintiff did not pay a price for the product which was arrived at through normal competitive practices of businesses selling a conparable product. Plaintiff is unable to set forth a specific breakdown as to the exact measure of damage suffered by plaintiff on each purchase of ready-mix concrete, but would conservatively estimate that by virtue of the conspiracy and inflation of prices arising therefrom that the retail price of ready-mix concrete was unlawfully inflated by approximately 20%. As has been previously stated, Plaintiff purchased approximately $1,000,000.00 worth of ready-mix concrete during the period covered by this action and based upon such percentage of arbitrary increase arrives at damages of approximately $200,000.00.

INTERROGATORY NUMBER SEVEN:

If not already included in your answers to these interrogatories, please state the price actually paid by you for each unit

of ready-mix concrete you purchased, as a result of which price you contend you suffered damages.

ANSWER TO INTERROGATORY NUMBER SEVEN:

The price actually paid for each unit of ready-mix concrete has previously been included in these Answers to Interrogatories.

INTERROGATORY NUMBER EIGHT:

If you are claiming that, but for the alleged conspiracy of the defendants, you would have been able to purchase ready-mix concrete at a lower price than what you in fact paid, please state the unit price you contend you would have paid in each ready-mix concrete transaction but for the alleged conspiracy.

ANSWER TO INTERROGATORY NUMBER EIGHT:

At this stage of the litigation, Plaintiff is unable to set forth a specific price which it would have purchased ready-mix concrete, but for the illegal conspiracy. But, as set forth in answer to Interrogatory No. 6, it is Plaintiff's belief and estimation that the price of ready-mix concrete would have been at least wenty (sic.) percent (20%) less had it not been for the conspiracy practiced by Defendants and others.

INTERROGATORY NUMBER NINE:

Please state all facts on which you will rely to prove the unit price you actually paid for ready-mix concrete in connection with all ready-mix concrete transactions in which you participated and claim to have sustained damages.

ANSWER TO INTERROGATORY NUMBER NINE:

Plaintiff will primarily rely on invoices supplied by Defen-

dant and other concrete suppliers to prove the unit price actually paid for ready-mix concrete. Additionally, plaintiff may rely on documents to be obtained from defendant and upon oral testimony by employees of defendant secured by was of deposition.

INTERROGATORY NUMBER TEN:

Please state all facts on which you will rely to prove the unit price you contend you would have paid for ready-mix concrete in connection wit all ready-mix concrete transactions in which you participated and claim to have sustained damages.

ANSWER TO INTERROGATORY NUMBER TEN:

Plaintiff will prove the amount which should have been paid for ready-mix concrete by utilization of expert testimony. Such expert testimony will be based on an analysis of the the economic factors existing in the relevant market during the period of the conspiracy and the impact of the conspiracy on those economic factors.

INTERROGATORY NUMBER ELEVEN:

If it is your contention that the unit price of ready-mix concrete you purchased was increased as a result of the alleged conspiracy of the defendants, please state all facts on which you will rely to prove your contention that the alleged conspiracy caused such prices to increase.

ANSWER TO INTERROGATORY NUMBER ELEVEN

It is the best information and contention of Plaintiff that the following facts will prove that the conspiracy entered into by Defendant caused the price of ready-mix concrete to increase:

(1) That the Defendants herein met on a systematic basis, the exact dates, places and times of which Plaintiff is currently unaware, with themselves and other unnamed conspirators.

(2) At such meetings, the Defendants and the other unnamed conspirators arbitrarily inflated the price at which each of them would sell ready-mix concrete to the purchasing public.

(3) That the Defendants and other unnamed co-conspirators systematically divided the sales territory and allocated jobs among the participating conspirators.

(4) That the Defendants and other unnamed conspirators sold ready-mix concrete at the arbitrarily inflated price and refused to sell at a lower price.

(5) Additionally, due to the fact that plaintiff has yet to obtain discovery from defendants, the foregoing facts may not be all inclusive and plaintiff reserves the right to amend such answer should additional facts be obtained through the discovery process.

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

By: /s/ Wilson P. Abraham
Wilson P. Abraham, President

[Jurat and Certificate of Service omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC. and FRANK T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

THIRD–PARTY COMPLAINT

[filed U. S. District Court Eastern District of La. Mar. 2, '77, 4:20 PM]

With full reservation of all rights, averments and defenses set forth in its answer filed herein, defendant-third-party plaintiff, Texas Industries, Inc., respectfully represents that:

I.

Third-party defendants, Jahncke Services, Inc. and Jimco, Inc., are Louisiana corporations with their principal places of business within the City of New Orleans, Parish of Orleans, State of Louisiana.

II.

Third-party defendant, Radcliff Materials, Inc., is an Alabama corporation authorized to do and doing business within the State of Louisiana, Parish of Orleans and within the jurisdiction of this court.

III.

Plaintiff, Wilson P. Abraham Construction Corporation, has alleged in Paragraphs 4.5 and 5.2 of its complaint that, by virtue of violations of the antitrust laws by third-party plaintiff and certain co-conspirators, it has sustained certain injury, which allegations third-party plaintiff, Texas Industries, Inc., has denied and which denial is incorporated herein by reference.

IV.

In response to certain discovery interrogatories propounded by third-party plaintiff, plaintiff, Wilson P. Abraham Construction Corporation, has avered that the said co-conspirators include third-party defendants herein, namely, Radcliff Materials, Inc., Jahncke Service, Inc. and Jimco, Inc.

Third-party plaintiff continues to aver that this Court lacks subject matter jurisdiction of the matters set forth in the complaint of Wilson P. Abraham Construction Corporation, and that the cause of action purportedly stated therein by Wilson P. Abraham Construction Corporation is barred by the four year statute of limitations provided in Title 15 U. S. C. 15(b), and, further, with full reservation of all rights set forth in its answer herein, third-party plaintiff, Texas Industries, Inc., avers in the alternative that if the court determines that jurisdiction of the subject matter set forth in the original complaint filed herein is proper, and/or that Wilson P. Abraham Construction Corporation is otherwise entitled to recover from third-party plaintiff, which is denied, then third-party plaintiff, Texas Industries, Inc., avers that it is entitled to contribution towards any such recovery from its alleged co-conspirators, third-party defendants herein, as among joint tort feasors.

WHEREFORE, third-party plaintiff prays that the above and

foregoing third-party complaint be filed, that third-party defendants be duly served with a copy of the third-party complaint, the original complaint and third-party plaintiff's answer to the original complaint, and that after due proceedings are had that, in the event third-party plaintiff is cast in judgment in any amount to the original plaintiff, Wilson P. Abraham Construction Corporation, that third-party defendants be cast in judgment for contribution to said third-party plaintiff as among joint tort feasors.

MONROE & LEMANN

Benj. R. Slater, Jr.
William J. Hamlin

/s/William J. Hamlin
1424 Whitney Building
New Orleans, Louisiana 70130
Telephone: 586-1900
Attorneys for: Third-Party Plaintiff

[Service instructions omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC. and FRANK T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

SUPPLEMENTAL THIRD PARTY COMPLAINT

[filed U. S. District Court Eastern District of La. Mar. 23, '77, 4:11 PM]

Third-party plaintiff, Texas Industries, Inc., repeats and realleges all allegations and reservations contained in its original third-party complaint as though set forth herein *in extenso*, and supplements said third-party complaint by adding a paragraph VI, as follows:

VI.

On information and belief, third-party defendant, Jahncke Services, Inc. is presently owned by OKC Dredging, Inc., a Louisiana corporation with its principal place of business within the Eastern District of Louisiana, who assumed any liabilities of Jahncke Services, Inc. in this action, and accordingly said OKC Dredging, Inc. should be made a third-party defendant herein.

WHEREFORE, third-party plaintiff prays that OKC Dredging, Inc. be served with the supplemental third-party complaint,

the third-party complaint, the original complaint of plaintiff, Wilson P. Ahraham Construction Corporation together with the answer thereto filed by Texas Industries, Inc., and that after due proceedings are had that, in the event third-party plaintiff is cast in judgment in any amount to the original plaintiff, Wilson P. Abraham Construction Corporation, that OKC Dredging, Inc. and the other third-party defendants previously named herein be cast in judgment for contribution to said third-party plaintiff as among joint tort feasors.

MONROE & LEMANN
Benj. R. Slater, Jr.
William J. Hamlin

/s/William J. Hamlin
1424 Whitney Building
New Orleans, Louisiana 70130
Telephone: 586-1900
ATTORNEYS FOR THIRD-PARTY
PLAINTIFF

[Service instructions omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM
CONSTRUCTION CORP.

VERSUS

TEXAS INDUSTRIES, INC. and
FRANK T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

[filed U. S. District Court Eastern District of La. May 16, "77, 4:26 PM]

OKC Dredging, Inc. (OKC), third party defendant, moves for an order dismissing the third party complaint of Texas Industries, Inc. against OKC insofar as Texas Industries seeks contribution with respect to its liability under the federal antitrust laws because the third party complaint fails to state a claim against OKC upon which relief can be granted for the reasons set forth in the memorandum accompanying this motion.

Respectfully submitted,

/s/Ewell P. Walther, Jr.
Ewell P. Walther, Jr.
Of
STONE, PIGMAN, WALTHER,

Wittmann & Hutchinson
1000 Whitney Building
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Telephone (504) 581-3200
Attorneys for OKC Dredging, Inc.

[Certificate of Service omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC. and FRANK T. DOOLEY

VERSUS

OKC DREDGING, INC., JIMCO, INC. and RADCLIFF MATERIALS, INC.

CIVIL ACTION
NO. 75-2820
SECTION "F"

MOTION OF THIRD-PARTY DEFENDANT RADCLIFF MATERIALS, INC. TO DISMISS PURSUANT TO RULE 12(b)(6)

[filed U. S. District Court Eastern District of La. Aug. 19, '77, 3:53 PM]

NOW INTO COURT, through undersigned counsel, comes Radcliff Materials, Inc., named a third-party defendant herein, and respectfully moves the Court to dismiss the third-party complaint of Texas Industries, Inc. pursuant to Rule 12(b)(6), FRCP, for failure to state a claim upon which relief can be granted, on the ground, that there is no right of contribution among alleged antitrust co-conspirators as a matter of law.

The reasons in support of this motion and the authorities relied upon by movant are set forth in the memorandum submitted herewith.

LEMLE, KELLEHER, KOHLMEYER & MATTHEWS

By /s/ Dando B. Cellini
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Attorneys for Third-Party Defendant
Radcliff Materials, Inc.

[Certificate of Service omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC. and FRANK T. DOOLEY

VERSUS

OKC DREDGING, INC., JIMCO, INC. and RADCLIFF MATERIALS, INC'

CIVIL ACTION
NO. 75-2820
SECTION "F"

MOTION OF THIRD-PARTY DEFENDANT JIMCO, INC. TO DISMISS PURSUANT TO RULE 12(b) (6)

[filed U. S. District Court Eastern District of La. Aug. 19, '77, 4:34PM]

NOW INTO COURT comes Jimco, Inc., named a third-party defendant herein, and moves the court to dismiss the third-party complaint of Texas Industries, Inc. pursuant to FRCP rule 12(b) (6) for failure to state claim upon which relief can be granted, on the ground that there is no right of contribution among alleged anti-trust co-conspirators as a matter of law.

CHAFFE, McCALL, PHILLIPS,
TOLER & SARPY

By: /s/ James A. Babst
James A. Babst, T. A.
Attorneys for Third-Party Defendant
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[Certificate of Service omitted]

MINUTE ENTRY
MITCHELL, J.
OCTOBER 4, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM
CONSTRUCTION COMPANY

VERSUS

TEXAS INDUSTRIES, INC., ET AL

CIVIL ACTION
NO. 75-2820
SECTION "F"

This matter was submitted to the Court on a former date. After careful consideration of the applicable law, and of the briefs and arguments of counsel, the Court now rules.

IT IS ORDERED, ADJUDGED, AND DECREED that the motions of third-party defendants, OKC Dredging, Inc. (formerly Jahncke Services, Inc.), Radcliff Materials, Inc., and Jimco, Inc., to dismiss, be and the same are hereby GRANTED.

This complaint is filed under the Clayton Act to recover damages from defendants for their alleged violations of the Sherman Act. Plaintiff also alleges that defendants have violated the antitrust laws of the State of Louisiana. In March of 1977, the defendant, Texas Industries, Inc., filed third-party complaints against OKC Dredging (formerly Jahncke Services), Radcliff Materials, and Jimco, alleging them to be co-conspirators in relation to plaintiff's complaint.

All three motions to dismiss are based on the same premise-

i. e., there is no right to contribution or indemnity among co-conspirators in a federal anti-trust case. All courts which have addressed this issue have decided in favor of movants' position. 1/ Although we find third-party plaintiff's argument to be persuasive, we feel that the weight of authority dictates a contrary result.

Therefore, the motions are granted.

/s/ Lansing L. Mitchell

1/ *American Motor Inns, Inc. v. Holiday Inns, Inc.*, 521 F. 2d 1230 (CA 3-1975); *Walker Distributing Co. v. Lucky Lager Brewing Co.*, 323 F. 2d 1 (CA9-1963), *appeal after remand*, 362 F. 2d 1008 (CA9-196), *cert. denied*, 385 U. S. 976, 82 S. Ct. 507 (1967); *Sabre Shipping Corp. v. American President Lines*, 298 F. S. 1339 (S.D.N.Y. - 1969); *Wainwright v. Kraftco Corp.*, 58 F.R.D. (N.D. Ga. - 1973).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILSON P. ABRAHAM CONSTRUCTION CORPORATION

VERSUS

TEXAS INDUSTRIES, INC., and FRANK T. DOOLEY

CIVIL ACTION
NO. 75-2820
SECTION "F"

JUDGMENT

[filed U. S. District Court Eastern District of La. Mar 29, '78, 1:57 PM]

Considering the direction of the Court as to entry of judgment; accordingly:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of third-party defendants, Radcliff Materials, Inc., OKC Dredging, Inc., and Jimco, Inc., and against third-party plaintiff, Texas Industries, Inc., dismissing the third-party complaint against these third-party defendants, with prejudice, and at the third-party plaintiff's costs.

New Orleans, Louisiana, this 29th day of March, 1978.

/s/ Nelson B. Jones
NELSON B. JONES. Clerk of Court

APPROVED AS TO FORM:

/s/ Lansing L. Mitchell
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 78-1788

[filed U. S. District Court Eastern District of La. Dec. 10, '79, 4:35 PM]

D. C. Docket No. CA-7502820 - "J"

WILSON P. ABRAHAM CONSTRUCTION COMPANY

Plaintiff,

v.

TEXAS INDUSTRIES, INC. and Frank T. Dooley,

Defendants.

TEXAS INDUSTRIES, INC.,
Third-Party Plaintiff-Appellant,

v.

RADCLIFF MATERIALS et al.,
Third-Party Defendants-Appellees,

Jahncke Service,
Third-Party Defendant.

Appeal from the United States District Court for the Eastern District of Louisiana

Before THORNBERRY, AINSWORTH and MORGAN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that the third-party-plaintiff-appellant pay to the third-party-defendants-appellees the costs on appeal, to be taxed by the Clerk of this Court.

October 16, 1979

Morgan, Circuit Judge, concurring in part and dissenting in part.

ISSUED AS MANDATE:
Dec. 7 1979

DATE OF ENTRY Dec 26 1979

A true copy
Test: GILBERT F. GANUCHEAU
Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ Brenda Hauck
Deputy

New Orleans, Louisiana Dec 7 1979

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